



## Report to the Auburn City Council

Action Item

Agenda Item No. 8

City Manager Approval

**To:** Mayor and City Council Members  
**From:** Jack Warren, Director of Public Works *gw*  
**Date:** February 9, 2009  
**Subject:** Statewide Septic System Proposed Regulations by the State Water Resources Control Board (AB 885)

### The Issue

Shall the City Council oppose Assembly Bill 885 and submit the attached resolution to the State Water Resources Control Board, Assemblyman Gaines and Senator Cox?

### Conclusion and Recommendation

Staff recommends, BY RESOLUTION, to oppose Assembly Bill 885 (Jackson), Statutes of 2000 and proposed AB 885 regulations.

### Background

In 2000 legislation was introduced to address the coastal areas concerns with pathogens and nutrient impacted water bodies. The legislation was expanded to incorporate statewide considerations of septic systems. Ultimately, AB 885 (Jackson) was passed in 2000 which made legislative changes to the State Water Code.

AB 885 required regulations to establish the following:

- New minimum operating requirements for onsite waste treatment systems (septic systems) that may include siting, construction and performance requirements
- New authorizing Placer County Environmental Health to implement those requirements if they request that authorization
- New requirements for corrective action when onsite sewage treatment systems fail to meet the requirements or standards
- New minimum requirements for monitoring used to determine systems performance, if applicable
- New exemption criteria to be established by the Regional Boards
- New requirements for determining a system that is subject to a major repair

The proposed regulations will have unfunded additional requirements for property owners of both new and existing septic systems. The proposed regulations require owners of septic systems to have their septic tank inspected by a qualified person for solid accumulation every five years. Property

owners with a septic system and domestic well must have their well water analyzed for specific constituents by a State certified lab every five years.

Placer County Environmental Health has been conducting staff presentations of the proposed regulations of AB 885 at the Municipal Advisory Committees throughout the County. Placer County Environmental Health requested the Placer County Board of Supervisors at the January 27, 2009 Board meeting to submit a letter of opposition on the proposed AB 885 to the State Water Resources Control Board which the Board of Supervisors unanimously agreed to. The letter sent by the Board of Supervisors is attached.

On January 29, 2009, Assemblyman Gaines held a Town Hall meeting at the Placer County Domes to discuss the proposed regulations for AB 885.

The State Water Resources Control Board has extended the public comment period for the proposed regulations for AB 885 from February 9, 2009 to February 23, 2009. They have postponed the public hearing from February 9, 2009 until the regulations have been redrafted due to the public involvement to date.

**Alternatives Available to Council; Implications of Alternatives**

1. Proceed with Staff Recommendation
2. Do not proceed with staff recommendation

**Fiscal Impact**

The City of Auburn property owners are primarily on sewer, but there are three identified areas that are currently use septic systems – Riverview Drive Area, Robie Drive Area, and portions of Oakridge Way Area. City Staff estimates that there are approximately 120 homes on septic systems within City limits.

**Impacts to Property Owners:**

Property Owners with septic systems under the proposed regulations would be required to conduct testing every five years on their septic tanks and onsite domestic wells. This cost is estimated to be \$325 for septic inspections and an additional \$325 for well testing, if applicable. Additional costs would be incurred if the septic tank is pumped.

The unfunded mandates from the regulations for AB 885 could have an impact on local governments. Since the regulations do not address the implementation of the guidelines, this could result in local agency costs to assist property owners in determining their level of compliance.

# County of Placer Board of Supervisors

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District 4

JENNIFER MONTGOMERY  
District 5



January 28, 2009

State Water Resources Control Board  
Division of Water Quality  
Attn: Todd Thompson, P.E.  
1001 I Street, 15th Floor  
P.O. Box 2231  
Sacramento, CA 95812

**SUBJECT: Comments on Proposed Amendments to the California Code of Regulation, Title 27, Division 5. State Water Resources Control Board, Rules Governing Onsite Wastewater Treatment Systems (OWTS); Conditional Waiver of Discharge Requirements for OWTS; and the Draft Environmental Impact Report (DEIR)**

Dear Mr. Thompson:

The Placer County Board of Supervisors appreciates the opportunity to comment on the subject documents. The County of Placer is a rural County with 26,000 OWTS, as estimated by the DEIR, representing 17% of the County's housing units.

## Summary of Placer County Comments

Placer County Board of Supervisors strongly opposes the regulations and waiver as proposed. General and specific areas of concern are noted within this letter. In summary, we find the sweeping and indiscriminate nature of the regulations as proposed will place an unnecessary burden on the citizens of Placer County and on the County itself.

In addition, the regulations as proposed would result in a severe financial impact to our residents and to our local county government. The regulations are confusing, inconsistent, severely impact Placer County's existing effective program, and may even pose a threat to public health and water quality. Therefore, the County of Placer cannot support the proposed regulations and waiver as currently written. We also find the DEIR incomplete and inadequate.

## General Concerns

Overall, the proposed regulations and waiver of discharge requirements are poorly prepared and overstep the legislation's intent. The proposed septic system standards are much broader than a focus on limiting water quality impairment. The proposed regulations go beyond the purpose of protecting public and environmental health and exceed the statutory authority of the original legislation. The regulations are overly prescriptive and there is a lack of flexibility for the implementation of the standards contained in the regulations.

The environmental review is inadequate. Unfortunately, and among other things it does not sufficiently address the impacts on septic system owners, the local authorized agencies that protect public health, the Regional Water Quality Control Boards, and the State Water Resources Control Board.

### Specific Concerns of Placer County

#### Property Owners and Local Government

The proposed regulations will have unfunded additional requirements for property owners of both new and existing septic systems. All existing and new septic systems will be required to conduct septic tanks solids level inspections and water well testing. Statewide, additional septage disposal capacity will be needed. New septic systems and existing systems' major repairs will be required to provide supplemental treatment. New unfunded mandates will impact local governments who will be asked for assistance in determining their levels of compliance by property owners.

#### Implementation

Appropriate implementation guidelines have not been developed and funding to accomplish implementation has not been addressed; leaving the regulations primarily 'self-implementing'. This will result in local agency costs to assist property owners in determining their level of compliance. Real estate transactions will require additional disclosures with determinations of compliance levels.

#### Enforcement

Enforcement has not been addressed. No process for variance to the proposed standards is covered.

#### Technical Problems

After thorough review there is not appropriate scientific basis for many of the proposed requirements. Proposed well testing, use of engineered fill, groundwater separation requirements, design criteria, increased use of supplemental treatment systems, etc. are all areas subject to question about their appropriateness and necessity. As a specific example well testing does not have a direct connection to the status of an OWTS. The presumption that the well status relates solely to the septic system functionality is flawed. Many other conditions can influence the temporary or permanent adequacy of a well's condition. Septic systems are only one of many considerations in determining potential areas of concern.

There is an expected increase in septage pumping but adequate treatment capacity is lacking statewide. The capacity is not available at existing facilities in Placer County. The cost to adequately plan and permit new or expanded facilities was not considered. The increased costs potentially encourage illegal disposal in sewer manholes, as well as unpermitted system repairs. Overall, the economic and fiscal impact analysis made speculative cost estimates without basis in reasonable assumptions.

#### Need for further regulatory relief/clarification

The legislation required promulgation of regulations. As currently written the proposed regulations require significant revision to return to the legislative intent. Either the regulations

should be substantially revised or legislation proposed to clarify the promulgation of the regulations.

Revenue

No appropriation for the provision of services or oversight has been addressed. Section 13291.5 of the Water Code stated the intent of the Legislature to assist private property owners with costs by encouraging loans. It is not realistic to believe that an adequate amount of currently highly sought after loan funding would be available for this program.

The DEIR states that "the state, in cooperation with EPA has set aside funds from its State Revolving Fund Program that can be made available to local qualified agencies who can then provide low-interest loans to homeowners to install, repair, replace or upgrade their OWTS. The homeowners would still bear the primary financial responsibility for these improvements, but could potentially tap into lower interest loans." Implementation of this program on a statewide scale would result in a potential need of these highly competitive funds. It is unlikely the State Revolving Fund has an adequate amount of loan funding available through the described mechanism.

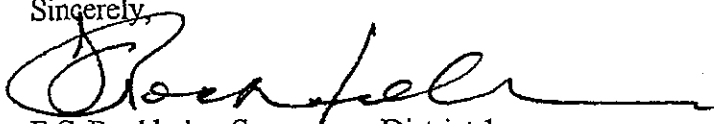
The current State fiscal crisis also makes adequate loan funding unlikely. Even if loan funding were available, the homeowner would still bear the cost. Due to the national (and state) economic crisis, it is difficult to secure credit and many people are losing jobs. It is likely that many people needing loans to meet this requirement, could not qualify. Additional costs to the state and local government to process, manage, and collect on any loans through the State Revolving Fund must also be considered. It is unlikely that local agencies have the staff to provide oversight and distribution of these funds.

In closing, the Placer County Board of Supervisors strongly opposes the regulations and waiver as proposed. The impacts would be sweeping and as previously noted consist of:

- unnecessary burdens to residents and Placer County;
- severe financial impacts to our residents and to our local county government.
- Confusion and inconsistency, severely impacting our existing effective program, and possibly posing a threat to public health and water quality.

Therefore, the County of Placer cannot support the proposed regulations and waiver as currently written and also find the DEIR incomplete and inadequate.

Sincerely,



F.C. Rockholm, Supervisor, District 1

Chairman of the Placer County Board of Supervisors

cc: State Assemblyman Ted Gaines, 4th District  
State Assemblyman Dan Logue, 3<sup>rd</sup> District  
State Senator Sam Aanestad, 4th District  
State Senator Dave Cox, 1st District  
Governor Arnold Schwarzenegger

RESOLUTION NO. 09-

RESOLUTION IN OPPOSITION TO AB 885 (JACKSON), STATUTES OF 2000,  
AND PROPOSED AB 885 REGULATIONS

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THE CITY COUNCIL OF THE CITY OF AUBURN DOES HEREBY RESOLVE:

**WHEREAS**, The California Legislature, in response to a specific problem of septic tank leakage of from the City of Malibu into the Pacific Ocean, overreached and enacted AB 885 (Jackson) in 2000, which imposes new and expensive unfunded mandates on all residents with septic tanks and wells;

**WHEREAS**, Draft AB 885 regulations by the State Water Resources Control Board are not based on sound science, not focused on remedying specific problems where they exist, and would thus impose a minimum inspection cost of \$650 on every Auburn household that has a septic tank and well;

**WHEREAS**, Studies and tests by various local authorities have demonstrated a very high water quality in the City of Auburn and Placer County;

**WHEREAS**, It is wrong and poor public policy to impose new costs on hard-working Auburn residents and retirees on fixed incomes when there is absolutely no evidence that septic tanks in Auburn are having any damaging impact on water quality;

**NOW, THEREFORE, BE IT RESOLVED** by the Auburn City Council of Auburn California, assembled in a general meeting, submit a resolution to the State Water Resources Control Board to discontinue any consideration of the draft AB 885 regulations and to the California Legislature to completely resolve this problem by repealing AB 885 of 2000.

DATED: February 9, 2009

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J.M. Holmes, Mayor

1 ATTEST:

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3 Joseph G. R. Labrie, City Clerk

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5 I, Joseph G. R. Labrie, City Clerk of the City of Auburn, hereby certify  
6 that the foregoing resolution was duly passed at a regular session meeting of  
7 the City Council of the City of Auburn held on the 9<sup>th</sup> day of February 2009 by  
8 the following vote on roll call:

8 Ayes:

9 Noes:

10 Absent:

11 Joseph G. R. Labrie, City Clerk